THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO. 14516 OF 2006

DATE: 18.9.2007

Between:

Government Junior College, Donakonda, Prakasam District.

…Petitioner

AND

1. Palleboina Balaiah, S/o Pitchaiaih and one another.

….Respondents

HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO. 14516 OF 2007

Order:

Questioning the award dated 27.01.2006 passed by the Labour Court, Guntur, in I.D. No. 94 of 2000, wherein the petitioner-College was directed to reinstate respondent No.1 herein into service with continuity of service and back wages, the petitioner-College filed the present writ petition.

Respondent No.1 was appointed as Attender on temporary basis in the petitioner-College on 01.11.1984. While working as such, in the year 1995, he was issued a charge sheet alleging that he produced a false Transfer Certificate showing that he passed 8th Class, for which, respondent No.1 submitted his explanation. Having not satisfied with the same, an Enquiry Committee was constituted, and while the enquiry was going on, respondent No.1 is alleged to have confessed that he has not passed 8th Class and the Transfer Certificate produced by him is not a genuine one. Further, he is said to have requested the Enquiry Committee not to take any criminal action against him and only remove him from service. In view of the alleged confession made by respondent No.1, the Enquiry Committee resolved to remove him from service, and accordingly, respondent No.1 was removed from service with effect from 26.09.1995. Against the said removal order, respondent No.1 raised an industrial dispute in I.D. No. 94 of 2000, and the Labour Court, by award dated 27.01.2006, partly allowed the same by setting aside the removal order and directing the petitioner-College to reinstate

respondent No.1 into service with continuity of service and back wages. Assailing the said award, the petitioner-College filed the present writ petition.

Learned Government Pleader for Higher Education, appearing on behalf of the petitioner-College, mainly contended that the 1st respondent, who is working as Class-IV employee in Government Service, will not come under the definition of 'workman' as defined under Section 2(o) of the Industrial Disputes Act, 1947, and the grievances of respondent No.1, if any, are to be redressed only through the A.P. Administrative Tribunal and not through any other forum, and though the petitioner-College has taken a preliminary objection before the Labour Court about the maintainability of the I.D. filed by respondent No.1, the Labour Court has not considered the said objection. He further contended that the Labour Court, without properly considering the entire material on record and the objections raised by the petitioner-College and without giving any valid or cogent reasons, passed the impugned award directing to reinstate respondent No.1 into service with continuity of service and back wages, which is illegal and arbitrary. He, thus, prays to set aside the impugned award and allow the writ petition.

On the other hand, learned counsel for respondent No.1 submits that the Labour Court, on considering the entire material on record, passed the impugned award, and therefore, there are no reasons to interfere with the same.

Heard the learned Government Pleader for Higher Education, appearing for the petitioner-College and the learned counsel for respondent No.1, and perused the material on record.

Respondent No.1 was removed from service on the ground that the Transfer Certificate pertaining to 8th Standard produced by him

was found to be not genuine. Against the said removal order, respondent No.1 raised an industrial dispute in I.D. No. 94 of 2004, and while the matter is pending before the Labour Court, the petitioner-College raised a preliminary objection about the maintainability of the I.D. contending that since respondent No.1 was appointed under Rule 10(a)(1) of the General Rules for the A.P. Subordinate Services, he cannot be treated as 'workman', and as such, the Labour Court has no jurisdiction to entertain the I.D. filed by respondent No.1, and the remedy available to him, if any, is otherwise. Unfortunately, the Labour Court has not taken into consideration the said objection raised by the petitioner-College. The Labour Court has also not given any valid or cogent reasons for setting aside the removal order and directing to reinstate respondent No.1 into service. It is appropriate to extract the reasoning given by the Labour Court, which reads thus:

> " If the petitioner produced non-genuine Transfer Certificate showing that he passed 8th Class, it should have been verified immediately after his appointment in the year 1984.
>
> Respondent stated in the counter that the petitioner produced Transfer Certificate at the time of his request for regularization of his service in the year 1995 and then it was sent for verification.
>
> If the petitioner did not produce Transfer Certificate in the year 1995, he would not have been removed form the service. It shows that the petitioner did not produce educational certificate at the time of his appointment.
>
> Even if the petitioner represented that he passed 8th Class at the time of his appointment in the year 1984, he could not be removed from the service in the year 1995.
>
> There is no evidence to show that 8th standard pass was the qualification for Attender in the year 1984 at the time of appointment of the petitioner as Attender.
>
> I, therefore, hold that the petitioner cannot be

> removed from the service even if he produced non-genuine Transfer Certificate in the year 1995. Hence, I answer the point accordingly."

A reading of the above, would make it clear that the Labour Court neither considered the objections raised by the petitioner-College nor applied its mind to the facts of the case. The Labour Court, without properly appreciating the material on record, passed the impugned award setting aside the termination order of respondent No.1. The learned counsel for respondent No.1, though tried to justify the appointment of the petitioner *inter alia* contending that since no educational qualifications were prescribed when respondent No.1 was appointed as Attender, and as such, his appointment cannot be terminated on the ground that he does not possess the requisite qualifications, and in those circumstances, the Labour Court has rightly set aside the order of termination, I am not inclined to agree with such submission of respondent No.1, inasmuch as the Labour Court while passing the impugned award has not adverted to the grounds raised by the petitioner-College and has passed the impugned award without application of its mind. In that view of the matter, I am of the considered opinion that the impugned award cannot be sustained, and is liable to be set aside and the matter be remanded to the Labour Court for fresh adjudication.

Accordingly, the writ petition is allowed and the impugned award is set aside. The matter is remanded to the Labour Court for fresh adjudication. Both the parties are at liberty to adduce any additional evidence or to place any relevant material before the Labour Court, and the Labour Court, after taking into consideration the entire material and evidence produced by both the parties, and also the objections raised by the petitioner-College herein, shall adjudicate the

matter afresh and pass appropriate orders in accordance with law. No costs.

_____

N.V. RAMANA, J.

Date: 18.09.2007

KA